IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7791 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI @ LAXMIDAS RAMJIBHAI LODHIYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR DJ CHAUHAN for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 28/6/2000 Annexure : A passed by Respondent No. 1 which he has passed in exercise of

powers conferred upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on four I.P.C. Cases lodged against the petitioner detenu, which are referred to in the grounds of detention at Annexure : B. And all the four cases are pending before the criminal court awaiting trial. The detaining authority also placed reliance on statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority has verified the statements of said four witnesses on 26/6/2000 and passed an order of detention on 28/6/2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Mr.Chauhan, the learned advocate for the petitioner has argued that looking to the grounds of detention, while passing an order of detention, the detaining authority has stated in Para 6 on Page 21 of impugned order that he has taken into consideration the provisions of Sec.56 and 57(C) of the Bombay Police Act 1951 which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. He has further argued that the detaining authority has taken into consideration less drastic remedy which was not available to him for passing an order of detention, and therefore, this is a case of total non-application of mind of the detaining authority.

5. Shri Chauhan has cited an authority in case of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT AND OTHERS, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it was not available to the detaining authority. He has taken into consideration the provisions of Sec.56 and 57 of the Bombay Police Act, 1951 which he could not have taken into consideration as the petitioner has not been

convicted in atleast two cases. This fact itself shows non-application of mind on the part of the detaining authority. The facts of the present case squarely fall within the four corners of the case cited by Shri Chauhan.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 28/6/2000 passed by Respondent no. 1 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to detain further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 19/10/2000. (H.H.MEHTA,J.)
ccshah